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IDAHO PUBLIC UTILITIES COMMISSION  
Chas. F. McDevitt  
Dean J. (Joe) Miller

September 17, 2007

*Via Hand Delivery*

Ms. Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83720

Re: UWI-W-07-02

Dear Ms. Jewell:

Enclosed for filing, please find nine (9) copies of the Supplemental Testimony and exhibits of Scott Rhead, with a copy of each designated as "Reporter's Copy". A computer disc containing the testimony and is also enclosed.

An additional copy of the documents and this letter is included for return to me with your file stamp thereon.

Very truly yours,

McDEVITT & MILLER LLP



Dean J. Miller

DJM/hh  
Enclosures

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RECEIVED  
2007 SEP 17 PM 11:01  
IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF UNITED WATER IDAHO INC., TO ) **CASE NO. UWI-W-07-02**  
AMEND AND REVISE CERTIFICATE OF )  
CONVENIENCE AND NECESSITY NO 143 )

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

SUPPLEMENTAL TESTIMONY OF SCOTT RHEAD

September 17, 2007

1 Q. Please state your name.

2 A. Scott Rhead.

3 Q. Are you the same Scott Rhead who previously filed Direct and Rebuttal  
4 Testimony in this proceeding?

5 A. Yes I am.

6 Q. What is the purpose of your Supplemental Testimony?

7 A. I will provide an update on the status of the City of Eagle's Application for  
8 Permits Nos. 63-32089 and 63-32090 pending at the Idaho Department of Water  
9 Resources ("IDWR", "Department").

10 Q. In your capacity as Director of Engineering for United Water, have you  
11 previously participated in water right application proceedings at the Department  
12 and are you familiar with procedures used by the Department to process water  
13 right applications?

14 A. Yes, I have participated in numerous water right application proceedings and I am  
15 familiar with the Department's procedures.

16 Q. As of the date of the filing of your Supplemental Testimony, has IDWR issued a  
17 final, non-appealable order granting the City's Application?

18 A. No it has not.

19 Q. Please describe activity that has occurred at the Department since May 24, 2007,  
20 with respect to the City's Application.

21 A. On July 18, 2007, the assigned Hearing Officer issued a Preliminary Order  
22 approving in part the permits subject to various conditions. The Preliminary  
23 Order is attached as Exhibit 105, pgs. 1—25. Under Department procedures,

1 parties may then petition for reconsideration. Several parties, either through  
2 counsel or on their own behalf, filed Petitions for Reconsideration. The City also  
3 filed a Petition for Reconsideration, objecting to some of the conditions contained  
4 in the Preliminary Order. Those Petitions are attached as Exhibit 105, pgs 26—51.

5 Q. What occurred in response to the Petitions.

6 A. On August 21, 2007, the Hearing Officer issued an Order granting  
7 Reconsideration. That Order is attached as Exhibit 105, pgs 52—53. As  
8 indicated in the Order, the Hearing Officer intends to reconsider the matter based  
9 on the Petitions and then issue a revised Order.

10 Q. As of the date of your Supplemental Testimony, has the Hearing Officer issued a  
11 revised Order?

12 A. No he has not.

13 Q. Is there any statutory or procedural deadline by which the Hearing Officer must  
14 issue a Final Order?

15 A. As I understand it, there is not.

16 Q. Please describe the procedures that will be in effect once the Hearing Officer does  
17 issue a Final Order.

18 A. Once the Order is final, parties opposing it will have 14 days to appeal to the  
19 Director of the Department for review of the Order. Other parties then have 14  
20 days to respond. The Director then determines whether to grant review. If review  
21 is granted the Director sets a briefing schedule and may hear oral argument. At  
22 the conclusion of briefing and argument the Director has 56 days to issue his Final  
23 Order, which time period can be extended for good cause. The Director also may

1 review the Hearing Officer's Order on his own motion even if no parties to the  
2 case appeal.

3 Q. When the Director issues a Final Order is the matter at an end?

4 A. Not necessarily. Within 28 days, parties may file a Petition for Judicial Review in  
5 State District Court.

6 Q. When the District Court rules on the Petition for Judicial Review is the matter  
7 then at an end?

8 A. Not necessarily. The judgment of the District Court is appealable to the Idaho  
9 State Supreme Court.

10 Q. Does that conclude your testimony?

11 A. Yes it does.

12 Q. When the Idaho State Supreme Court rules, is the matter then at an end?

13 A. Not necessarily. The Supreme Court may refer the matter back for further  
14 proceedings.

### CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of September, 2007, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input type="checkbox"/>
<u>jjewell@puc.state.id.us</u>		

Bruce Smith	Hand Delivered	<input type="checkbox"/>
MOORE, SMITH, BUXTON & TURCKE	U.S. Mail	<input checked="" type="checkbox"/>
950 W. Bannock, Suite 520	Fax	<input type="checkbox"/>
Boise, ID 83702-5716	Fed. Express	<input type="checkbox"/>
	Email	<input checked="" type="checkbox"/>

Robert B. Burns	Hand Delivered	<input type="checkbox"/>
MOFFATT THOMAS	U.S. Mail	<input checked="" type="checkbox"/>
101 S. Capital Blvd. 10 <sup>th</sup> Floor	Fax	<input type="checkbox"/>
P.O. Box 829	Fed. Express	<input type="checkbox"/>
Boise, ID 83701-0829	Email	<input checked="" type="checkbox"/>

BY: Heather Houlihan, Legal Assst.  
MCDEVITT & MILLER LLP

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS TO )  
APPROPRIATE WATER NOS. 63-32089 AND )  
63-32090 IN THE NAME OF THE CITY )  
OF EAGLE )  
\_\_\_\_\_ )

**PRELIMINARY ORDER**

On January 19, 2005, the City of Eagle (“Eagle”) filed two applications for permit to appropriate water, numbered in the files of the Idaho Department of Water Resources (“IDWR” or “Department”) as 63-32089 and 63-32090. IDWR published notice of the applications in the Idaho Statesman on April 21 and 28, 2005. The applications were protested by the following individuals: Roy Barnett, Tim Cheney, City of Star, Dean and Jan Combe, Michael Dixon/Hoot Nanney Farms, Bill Flack, Bob and Elsie Hanson, Michael Heath, Charles Howarth, Corrin Hutton, Norma Mares, Michael McCollum, Charles Meissner, Jr., LeRoy and Billie Mellies, Robyn and Del Morton, Frank and Elaine Mosman, Joseph, Lynn, and Mike Moyle, Eugene Muller, Tony and Brenda O’Neil, Bryan and Marie Pecht, Dana and Viki Purdy, Sam and Kari Rosti, Ronald Schreiner, Star Sewer and Water District, Jerry and Mary Taylor, United Water Idaho, and Ralph and Barbara Wilder.

IDWR conducted a prehearing conference on July 28, 2005. At the prehearing conference, Scott Reeser hand-delivered a letter to IDWR. In the letter, Scott Reeser asked to intervene in the contested case.

On September 13, 2005, IDWR issued an order granting Scott Reeser’s petition to intervene.

Several protestants failed to appear at the prehearing conference. IDWR mailed a notice of default to the non-appearing protestants. The following non-appearing protestants who failed to show good cause for non-appearance were dismissed as parties: Roy Barnett, Bryan and Marie Pecht, Del and Robin Morton, Tony and Brenda O’Neil, and Frank and Elaine Mosman.

The hearing officer conducted a second prehearing conference on October 18, 2005. At the prehearing conference, Eagle proposed to drill two wells for conducting a pump test. Eagle proposed to pump water from one of the wells and measure water levels in other wells in the vicinity of the pumped well to determine the impacts of pumping.

On December 22, 2005, IDWR approved two drilling permits to construct wells for the pump test.

On January 17, 2006, IDWR received a "notice of protest" from Bud R. Roundtree. IDWR interpreted the document as a petition to intervene.

On January 19, 2006, the hearing officer issued a *Notice of Hearing, Order Authorizing Discovery, and Prehearing Order*. The hearing officer scheduled the hearing for April 10 through April 14, 2006. On February 28, 2006, Eagle notified the hearing officer that the two test wells had not been constructed. The letter stated "the City of Eagle will not be able to get the pump test completed pursuant to the existing schedule." As a result of the notice, the hearing officer canceled and continued the hearing. In the *Order Continuing Hearing and Canceling Prehearing Deadlines*, the hearing officer ordered the following:

...[U]pon completion of construction of the test wells, the City of Eagle shall arrange a time for the anticipated pump tests with the other parties. When the date(s) for the pump tests have been arranged, the City of Eagle shall notify the Department of the test date(s). After receiving notice of the test date(s), the Department will inquire about available dates for a hearing. The hearing will be scheduled no earlier than ninety days following the date of the test to allow the exchange of information and discovery previously authorized.

On July 11, 2006, the City of Eagle notified the hearing officer that "the pump test conducted by the City of Eagle has been completed."

Sometime during late summer or the fall of 2006, Eagle submitted a report titled *City of Eagle – 7 Day Aquifer Test* to IDWR staff for review. The document is dated "June 2006," but the test was not completed until June 19, 2006.

On September 6, 2006, the hearing officer issued a second *Notice of Hearing, Order Authorizing Discovery, and Prehearing Order*. The Notice of Hearing scheduled the hearing for December 6 through 8, 2006 and December 11 and 12, 2006. At the time of service of the notice of hearing, IDWR had not acted on the petition to intervene filed by Bud Roundtree. The record does not show that IDWR ever determined whether Roundtree should be allowed to intervene. Roundtree received notice of all the proceedings, however, and IDWR treated Roundtree as a full party to the contested case.

On November 7, 2006, Star Sewer & Water District withdrew its protest.

On November 13, 2006, protestants Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., and Charles Howarth filed a *Motion to Continue the Hearing*. On November 15, 2006, the above protestants filed an *Amended Motion to Continue Hearing*. The protestants filing the motion for continuance asserted: (1) various scheduling conflicts of the protestants; and (2) Eagle failed to "arrange a time for the anticipated pump test with the other parties" as required by the hearing officer's March 10, 2006 *Order Continuing Hearing and Canceling Prehearing Deadlines*.

On November 20, 2006, the hearing officer denied the *Amended Motion for Continuance*. This order will not discuss the grounds for refusing the continuance based on scheduling conflicts. A discussion of the prearrangement of the pump test is germane, however.

In denying the request for a continuance on the grounds of failure to jointly conduct a pump test, the hearing officer wrote:

...The hearing officer intended that all the parties interested in the pump test have an opportunity to participate in the test. If Eagle failed to arrange the timing of the test with the parties, the hearing officer is dismayed that Eagle did not follow the dictates of the order.

Nonetheless, even assuming Eagle did not arrange a time for the pump test with the protestants as required by the hearing officer's March 10, 2006 order, the protestants have known that the City of Eagle completed its pump test since receiving the July 11, 2006 letter. The hearing officer also notified the protestants of the completion of the pump test in his August 16, 2006 letter and alluded to the completion of the test in his September 6, 2006 order. Failure of the city to fully coordinate the pump test with the protestants should have been raised as an issue at the time the protestants were notified that the pump test had been completed. Instead, the protestants waited until less than a month before the scheduled hearing to complain. Despite Eagle's failure, the protestants' inaction after learning of the completion of the pump test for approximately four months leads the hearing officer to surmise that the protestants were disinterested in participating actively in the pump test. Consequently, failure to coordinate the pump test is not grounds for postponing the hearing at this late date.

On November 22, 2006, protestants Joseph, Lynn and Michael Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., and Charles Howarth filed a *Motion in Limine*. The protestants participating in the *Motion in Limine* argued that the "...data and results collected from the seven-day pump test conducted by the City of Eagle in May and June, 2006" should be excluded from the evidence "...because the Protestants were not provided an opportunity to collect data from their wells while the pump test was conducted."

On November 30, 2006, the hearing officer issued an *Order Denying Motion in Limine, Notice of Staff Memorandum, and Amended Notice of Hearing*. In the order, the hearing officer stated:

...The protestants had an opportunity to complain about their inability to participate in the test long in advance of the hearing. The protestants did not avail themselves of the opportunity and should not be allowed to raise the issue just prior to the hearing as a means of preventing consideration of technical information.

The *Motion in Limine* should be denied.

On November 29, 2006, Sean Vincent and Shane Bendixsen submitted a Department staff memorandum to the hearing officer that evaluated the pump test conducted for the City of Eagle test wells. A copy of the staff memorandum is enclosed with this document. The staff memorandum raises several issues about the procedures of the pump test and the analysis of the pump test data. The

questions raised by Department staff could seriously affect the credibility of the pump test evidence presented at the hearing.

The hearing officer will consider the Department staff memorandum as part of the evidence in this contested case. Because the analysis of the pump test submitted to Department staff was incomplete, the hearing officer will forward any additional evidence about the pump test received into evidence at the hearing to Department staff for further review to determine possible deficiencies. After the staff review, the hearing officer will distribute the results of the Department's post hearing review to the parties who will have an opportunity to submit additional comments and possibly to request supplemental hearings about the document. This process **will delay** the ultimate consideration of the applications.

The November 30, 2006 order also delayed commencement of the hearing by one day.

A hearing for the contested case was conducted on December 7 and 8, 2006, and resumed on December 11 and 12, 2006. At the end of the day on December 12, 2006, the presentation of evidence was not complete. As a result, additional evidence was presented the morning of December 18, 2006.

Bruce Smith and Tammy Zokan, attorneys at law, appeared on behalf of Eagle. Charles Honsinger and Jon Gould, attorneys at law, appeared on behalf of Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanney Farms. Sam Rosti, Corrin & Terry Hutton, Mary Taylor, and Jan Combe appeared individually representing themselves.

On December 20, 2006, the hearing officer issued a request for staff memorandum to Hal Anderson, Rick Raymondi, Sean Vincent, and Shane Bendixsen. The request for staff memorandum stated the following:

Sean Vincent (Vincent) and Shane Bendixsen (Bendixsen) reviewed a technical document titled *City of Eagle, Idaho 7-Day Aquifer Test* prepared by Chris H. Duncan of Holladay Engineering Company. After the review, Vincent and Bendixsen issued a staff memorandum dated November 29, 2006. In the memorandum Vincent and Bendixsen stated that "the scope of the data collection was adequate, but the aquifer test analysis is incomplete."

The request for staff memorandum recited some of the procedural background, and further stated:

At a hearing conducted on December 7-8, 11-12, and 18, 2006, the City of Eagle presented additional analysis of the aquifer test data. In addition, the City of Eagle called Vincent to testify regarding the November 29, 2006 staff memorandum.

THEREFORE, the hearing officer invites department staff to augment the November 29, 2006 staff memorandum regarding the above captioned matter, which could include, without limitation:

1. A full scrutiny of the methods of gathering data, the data presented, and results of the aquifer test contained in the *City of Eagle, Idaho 7-Day Aquifer Test* report dated June 2006.
2. Presentation and analysis of additional data available to department staff to enhance the hearing officer's understanding of the hydrogeology and aquifers in the vicinity of the proposed appropriations of water, including, but not limited to data related to aquifer tests performed for the Lexington Hills well and the Floating Feather well.
3. An independent analysis of Eagle's 7-Day Aquifer Test data using commonly accepted scientific methods in the field of geology, hydrogeology, and engineering.
4. A technical review and critic (sic) of any information and analysis of data presented as evidence during the contested case hearing conducted on December 7-8, 11-12, and 18, 2006.

On February 27, 2007 (date on the document was February 27, 2006), Sean Vincent of IDWR submitted to the hearing officer a staff memorandum titled *Review of Addendum to City of Eagle, Idaho 7-Day Aquifer Test Report*. Attached to the staff memorandum was a document titled *Addendum to City of Eagle 7-day Aquifer Test Report*.

In the staff memorandum, Vincent states that "the Addendum adequately addresses comments made in a previous memo to you dated November 29, 2006."

On March 13, 2007, Eagle mailed copies of the written addendum reviewed by IDWR staff to the parties who attended the December hearing.

On March 27, 2007, the hearing officer mailed a copy of the staff memorandum written by Vincent to the parties who attended the December hearing. The hearing officer also served a *Notice of Consideration of Additional Evidence and Post Hearing Order* on the parties. The document informed the parties that the hearing officer would consider the information in the addendum and the staff memorandum, and granted the parties until April 25, 2007 to review documents and to submit technical comments about the addendum to the hearing officer and/or request a supplemental hearing.

On March 27, 2007, the hearing officer issued an order dismissing the following parties from the contested case: Michael McCollum, Michael and Nancy Heath, Tim Cheney, Bob & Elsie Hanson, Bill Flack, Ronald Schreiner, City of Star, Scott and Nancy Reeser, Bud Roundtree, Ralph and Barbara Wilder, and Norma Mares.

On April 24, 2007, Mary Taylor submitted written comments to Eagle's addendum.

On April 25, 2007, protestants Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanny Farms, Inc., submitted comments to Eagle's addendum and the IDWR staff memorandum.

Having considered the evidence presented at the hearing, and the information subsequently submitted to the hearing officer, the hearing officer finds, concludes, and orders as follows:

### FINDINGS OF FACT

1. On January 19, 2005, the City of Eagle submitted two applications to appropriate water to IDWR. IDWR assigned application numbers 63-32089 and 63-32090 to the applications.

2. Application to appropriate water no. 63-32089 seeks the following:

Source:		Groundwater
Flow Rate:		4.0 cfs
Purpose of Use:		Municipal
Proposed Priority:		January 19, 2005
Period of Use:		Jan. 1 through Dec. 31
Points of Diversion:		
Township 04 North, Range 01 West,	Section 10	NWNE <sup>1</sup>
	Section 11	SENW
	Section 10	NWNW
	Section 11	NWSE (two wells)
Place of Use:		The municipal service area for the City of Eagle.

3. Application no. 63-32090 proposes the following:

Source:		Groundwater
Flow Rate:		4.9 cfs
Purpose of Use:		Municipal
Proposed Priority:		January 19, 2005
Season of Use:		Jan. 1 through Dec. 31
Points of Diversion:		
Township 04 North, Range 01 West,	Section 10	NWNE
	Section 11	SENW
	Section 10	NWNW
Place of Use:		The municipal service area for the City of Eagle.

<sup>1</sup> Public land survey descriptions in this decision without a fraction following a two alpha character descriptor are presumed to be followed by the fraction "1/4." In addition, all public land survey descriptions are presumed to be based on the Boise Meridian. All locations are in Ada County.

4. The two applications identify eight possible separate well locations. The three points of diversion listed in application no. 63-32090 duplicate locations described in application no. 63-32089. Eagle only intends to construct a maximum of five wells.

5. Eagle owns and operates a municipal water system that serves a geographical area within the municipal boundaries of the City of Eagle. The certificated area of service for the Eagle municipal water system also includes lands outside of the city boundaries. The certificated area for service by the Eagle municipal water system is depicted in Eagle Exhibit 6 and is color-coded in pink. Eagle Exhibit 6 also shows locations of the five wells proposed by the applications.

6. A portion of Eagle's service area is located west of Linder Road, east of Highway 16, and north of Highway 44 to the edge of the foothills bounded on the north by Homer Road. This area will be referred to in this decision hereinafter as the "western expansion area."

7. Two housing developments named Eaglefield and Legacy are currently proposed for construction in the western expansion area. The combined number of homes proposed for the development is approximately 2,000 homes. The homes will be constructed on approximately 800 to 900 acres in Sections 2, 3, 9, 10, and 11, T4N, R1W.

8. Eagle anticipates that the development for the 2,000 homes will be complete within five-years, although all of the homes may not be built by that time.

9. Developers proposing construction of residential housing within Eagle are required to dedicate sufficient ground water or surface water rights to the proposed developed lands to accommodate irrigation demands within the subdivision. When surface water is the traditional method of irrigating the lands prior to development, the developer is required to install a separate system from Eagle's municipal water system for delivery of surface water for irrigation.

10. The applications propose delivery of water primarily for in-house use in the 2,000 homes projected for construction. The peak one-hour demand for in-house use in 2,000 residential units is 2.23 cfs. In addition, Eagle is required to supply the development with 6.68 cfs for fire protection. The total projected instantaneous demand is 8.9 cfs, the combined flow rate sought by the two applications.

11. The developers of the proposed subdivisions must pay for the five proposed wells and internal delivery system within the development. In addition, Eagle has set aside monies in its budget for construction of main lines and trunk lines to connect with the existing Eagle municipal water system. Eagle also has the power to levy assessments against its water users for payment of additional improvements. Finally, Eagle has the authority to form a Local Improvement District (LID) and issue bonds to be repaid by future assessments.

12. Eagle does not presently intend to employ any water storage to meet peak demands. Storage to supply short-term peak demands and fire flow demands could be a component of future use, however. Eagle Exhibit 6 identifies the location of a future storage tank at the northern boundary of the western expansion area.

13. In May 2006, Eagle constructed two wells within the proposed development property. Both of the wells were constructed according to the Department of Environmental Quality standards.

14. The first well was constructed in the SENW, Section 11, Township 04 North, Range 01 West. This well will be referred to hereafter as Well no. 1 or the "Legacy Well." The second well was constructed in the NWSE, Section 11, Township 04 North, Range 01 West. This well will be referred to hereafter as Well no. 2, or the "Eaglefield Well."

15. An aquifer pump test was conducted from approximately May 25 through June 19, 2006, by pumping the Eaglefield Well and monitoring water levels in other wells. The test was conducted in three separate phases. Background testing was conducted for seven days prior to the pump test. A seven-day constant rate pump test commenced on June 2 and ended on June 9 at a pumping rate of 1,580 gallons per minute ("gpm"). Following pumping, water levels were measured for seven days following the end of the pumping period to determine recoveries of ground water levels without pumping.

16. Eagle monitored the water levels in eight wells. One of the monitoring wells was the pumping well (Eaglefield Well). Water levels in the Legacy Well were monitored. Water levels in six other privately owned wells were also monitored. Other parties to this contested case were not given an opportunity to participate in the test and monitor their own wells during the test.

17. Eagle submitted to IDWR a report titled *City of Eagle, Idaho 7-Day Aquifer Test*. The report was received into evidence as Eagle Exhibit 14. Copies of the aquifer test were made available to the parties.

18. IDWR staff reviewed the report. In a staff memorandum dated November 29, 2006, staff found several deficiencies in the report. The staff memorandum stated, among other things, the following:

a. A higher pumping rate than was originally proposed for the lower yielding Monitoring Well # 1 (Legacy Well) could and should have been used to stress the system. If Eagle had done so, the effect on other nearby wells and possible boundary conditions would have been more clearly identified.

b. Site hydrogeology should have been consulted to determine whether the test data and conceptual models were reasonable.

c. Other factors such as water level trends, barometric pressure fluctuations, and fluctuations caused by nearby pumping wells should have been examined and used to correct and/or interpret the test data.

d. Tables should have been prepared to identify the various wells and their construction characteristics. Methods of analysis other than the Theis Equation should have been employed. This would have verified the results of the Theis estimates. Use of other methods would have better analyzed the water level recovery data.

e. Significant differences in the values estimated for storativity were not well explained.

f. Some water levels recovered to an elevation higher than the initial static water level.

19. The above deficiencies were discussed at the hearing. As a result of these concerns, the hearing officer allowed additional analysis of data and information following the conclusion of the presentation of evidence.

20. Ground water levels measured in a well owned by Ricks (Monitoring Well no. 6) showed some signs of a boundary condition. The Ricks well began a steeper decline in water levels approximately four to five days into the pump test. Because the rate of pumping of the Eaglefield Well was not as high as it could have been, and because the pumping test was of somewhat short duration, this possibility of boundary conditions was never explored.

21. In an addendum to its original report submitted to the hearing officer after the hearing, Eagle addressed some of the concerns raised by IDWR staff. As a result, IDWR staff issued a supplemental staff memorandum dated February 27, 2007. The author of the supplemental memorandum, Sean Vincent, wrote the following:

1. The water level and aquifer test data presented in the Addendum generally support the authors' primary conclusion (i.e., the deep sand layers that are targeted for production have sufficient capacity for additional withdrawals). The fact that static water levels in the deep system near the area of proposed development are above land surface and appear to be relatively stable suggest that the deep aquifer system is not currently in a state of overdraft.
2. An exception to the relatively stable water level trend described above is the hydrograph for Well 04N01W-31AAA1, which is located approximately 5 miles southwest of the area of proposed development. The water level in this well has declined by approximately 10 to 15 feet since 1970. Because the aquifer strata are dipping, however, this 462-foot deep well may not be producing from the same aquifer system that is targeted for the development by the City of Eagle.
3. The inclusion of a conceptual hydrogeologic model, hydrographs for area wells, and additional analyses using the Cooper-Jacob (1946) and Theis (1935) residual drawdown methods, significantly improves the value of the aquifer test as a basis for evaluating the water supply.
4. As discussed in the Addendum, semilogarithmic plots of drawdown and residual drawdown suggest that both positive (recharge) and negative (finite aquifer) boundaries affected the test data. The observed behaviors are consistent with the conceptual model of a finite, confined aquifer that receives recharge from the surrounding uplands. Given the available data,

application of the Theis (1935) solution to estimate the aquifer properties is appropriate for this hydrologic setting.

5. The Addendum also includes calculations for estimating potential impacts to existing wells. The calculations, which also are based on the Theis (1935) solution, are conservative in that they neglect to account for aquifer recharge but non-conservative in that they are premised on the assumption of an infinite aquifer.
6. The 1-year timeframe for evaluating impacts to existing wells is appropriate, in my opinion, and is consistent with guidance for determining yield for public drinking water supply wells (IDEQ, 2007). The ranges of transmissivity and storativity values used to estimate drawdown also are appropriate based on available information.
7. I verified that the drawdown estimates presented in Table 4 of the Addendum were calculated correctly using the series approximation of the Theis (1935) solution and the assumed input values.
8. Although the data analysis provides the basis for estimating hydraulic properties for the target aquifer system, the aquifer test was not of sufficient duration to definitively evaluate aquifer boundary conditions and long-term impacts associated with pumping. As recommended in the Addendum (Recommendations 15 and 16), a long-term water level and discharge rate monitoring program should be implemented if the water right applications are approved in order to evaluate water level trends as affected by pumping. Dedicated upgradient and downgradient monitoring wells that are completed in the deep aquifer system within the zone of influence of the aquifer test are recommended.
22. The hearing officer adopts the Vincent analysis text quoted above as findings of fact.
23. Ground water underlying the location of the proposed wells resides in three aquifers separated by discontinuous clay aquatards. The discontinuity of the impervious clay strata allows some communication between the aquifers. This communicative relationship between the aquifers will be discussed in subsequent findings.
24. The shallow aquifer is a water table aquifer extending from land surface to approximately 100 feet below land surface. The intermediate aquifer is generally found from 100-200 feet below ground surface and is at least semi-confined. The deep aquifer is located at depths below approximately 200 feet and is under artesian pressure. There may also be deeper aquifers, including geothermal aquifers.
25. The production zones for two of the test wells are completed in the shallow aquifer. The production zones for three of the test wells are completed in the intermediate aquifer. The

Eaglefield Well, the Legacy Well, and one of the United Water wells are completed in the deep aquifer. Evidence at the hearing established that a United Water intermediate aquifer well and a United Water deep aquifer well were completed within the same borehole. Upon construction, United Water nested strings of casing inside a single well. The casing for the monitoring well identified as having been constructed into the deep aquifer monitoring well commingled the intermediate and deep aquifers together, resulting in a mixing of water from the intermediate and deep aquifers, and also mixing the pressures of the two zones. This commingling probably skewed the data gathered from the United Water deep aquifer well. As a result, the only direct measurements of drawdowns in the deep aquifer caused by pumping are the measurements of drawdowns for the Legacy well.

26. Eagle Exhibit 8 is a summary of the potential effects on the protestants' wells of pumping the proposed Eagle Wells at various flow rates.

27. Eagle Exhibit 24 contains information about the protestants' well and tables estimating drawdowns using the Theis equation at various radial distances from a producing well in the three different aquifers, the shallow aquifer, the intermediate aquifer, and the deep aquifer.

28. Table 1 of Eagle Exhibit 24 is an estimate of potential drawdown in the shallow aquifer based on various pumping rates and distance from the pumping well. The estimates were calculated by multiplying Theis equation drawdowns by a multiplier of 0.116. The 0.116 multiplier is an arbitrary number that has no basis in scientific or technical literature nor is it derived from actual data. Nonetheless, there is limited communication between the shallow, intermediate, and deep aquifers, and the separation between the shallow aquifer and the deep aquifer production zone significantly reduces the communication. The hearing officer determines there is little effect on the shallow aquifer by pumping from the deep aquifer.

29. Table 2 of Eagle Exhibit 24 is an estimate of potential drawdowns in the intermediate aquifer resulting from continuous pumping at various flow rates from the deep aquifer. The drawdowns were calculated by multiplying the Theis equation drawdown values by 0.5. The 0.5 multiplier has no basis in technical literature or data analysis. The hearing officer determines there is a direct hydraulic relationship between the intermediate aquifer and the deep aquifer from which Eagle proposes to produce water. Although the direct relationship may be limited by the separation from the deep aquifer, the degree of the limitation was not established. As a result, the hearing officer assumes the full Theis equation drawdowns will occur in the intermediate aquifer without applying a fractional multiplier, and will use Table 3 of Eagle Exhibit 24 to determine the impacts of pumping the proposed wells on wells constructed in the intermediate aquifer.

30. Table 3 of Eagle Exhibit 24 contains results of a direct Theis equation calculation of drawdowns at various flow rates and distances from the pumping well for continuous pumping over a period of 365 days. Pumping from the deep aquifer will directly and adversely affect other nearby water users diverting from the deep aquifer.

31. Water residing in the intermediate and deep aquifers in the area of proposed well construction is under artesian pressure. Artesian pressure in the deep aquifer causes water to rise

above land surface in wells constructed with a production zone in the deep aquifer. These artesian pressures have been used by some of the protestants to supply water to their beneficial uses.

32. The following is a table of the active protestants' names, water right priorities/date of construction, and the depth of their wells. Some of this information is taken from Eagle Exhibit 24.

Protestant	Water Right	Priority - Construction	Distance from Nearest Proposed Eagle Well	Comments
Dean & Jan Combe	63-2858A	8/5/1956	5,900 ft	Well is 65 feet deep
Mike Dixon	63-2957 63-2958 63-31988	8/28/1953 8/28/1953 3/1/1976		No information about the depth or number of wells was presented at the hearing
Charles Howarth	Domestic (not recorded)	2002	1,399 ft	Well is 333 feet deep
Corrin & Terry Hutton	Domestic		11,992 ft	Well is 115 feet deep
Charles W. Meissner	Three wells. Well logs for two of the wells. No recorded water rights.	July 1981 July 1970	4,800 ft	Well is 90 feet deep Well is 103 feet deep
Mike Moyle	63-2546 63-2609	12/12/1959 2/15/1944	5,643 ft to 7,200 ft	Six wells, all completed in the deep aquifer
Eugene Muller	63-22650	7/25/1887	3,286 ft	Well was initially completed in the shallow aquifer. The well was redrilled in 1979, and now the production zone is in the deep aquifer
Dana & Viki Purdy	63-2920 63-15680 63-22652	1/2/1953 6/1/1900 6/1/1967	3,390 ft 2,700 ft approx.2,640 ft	Well is 90 feet deep Well is 250 feet deep Well is 120 feet deep
Sam & Kari Rosti	Domestic (not recorded) 63-11715	1980 1992	3,444 ft	Well is 255 feet deep Well is 445 feet deep
Jerry & Mary Taylor	63-5040 63-2858B 63-17523 63-3296 63-32189	3/1/1941 6/10/1951 6/1/1960 6/5/1962 3/31/1976	5,997 ft.	Wells completed in the shallow aquifer

33. Pumping at a continuous rate of 8.9 cfs is not an unreasonable assumption about future use of water by Eagle, given Eagle's projected growth and probable storage of municipal water in the future.

34. Pumping of Eagle's proposed wells at a rate of 8.9 cfs will cause significant reduction in the artesian pressures of wells constructed in the deep aquifer. Pumping will also cause reductions in artesian pressures in the intermediate zone.

### **Moyle**

35. Joseph, Lynn, and Mike Moyle own six wells constructed in the deep aquifer that flow under artesian pressure. Four of the wells are described as points of diversion by water rights nos. 63-2546 and 63-2609, bearing priority dates of 1939 and 1943, respectively. A fifth well is the point of diversion for an unrecorded domestic use for a home built by Joseph and Lynn Moyle in approximately 1970. The sixth well was constructed in 1997 to supply water to Mike Moyle's home.

36. Moyles have measured the closed-in pressure in the wells at 10 pounds per square inch ("psi"). Ten psi correlates to a water level head of approximately 21 feet. The flowing artesian wells have supplied stock water for as many as 43,000 mink on the Moyle property. In addition, the Moyle wells have provided irrigation water and water for commercial refrigeration and cooling. Finally, the flowing artesian wells provide domestic water for several homes. In some locations, small, relift pumps increase the pressure for commercial and domestic uses.

37. The four Moyle wells described by decreed or claimed water rights are remote from an electrical supply. As a result, pumping the wells would be difficult if the artesian pressure is lost.

38. As artesian pressure declines, the flow from the artesian wells will decrease. During the end of June 2006 or the first of July 2006, the pressure dropped in some of the artesian wells. Moyles discovered that artesian water was not flowing to the end of the water lines providing drinking water for the mink. As a result, some of the mink died from lack of water.

39. If Moyle's nearest well is approximately 5,643 feet away from a new well pumping continuously at a flow rate of 8.9 cfs, Table 3 of Eagle Exhibit no. 24 predicts a decline in artesian pressure of approximately 15 feet. A reduction from an artesian pressure head of 21 feet down to six feet would significantly reduce the flow needed to supply the domestic, commercial, stockwater, and irrigation needs for Moyles. Lesser reductions of artesian pressure will also significantly reduce the flow needed by Moyles to supply the beneficial uses.

### **Muller**

40. Eugene Muller holds water right no. 63-22650. The original well was constructed to a depth of 70 feet, and the production zone was in the shallow aquifer. In 1979, the well could no longer provide water for Muller's beneficial use, and Muller dug a new well in the deep aquifer. The new well is a flowing artesian well.

41. Muller testified that water flowed from the original well. His testimony is inconsistent with the described characteristics of the shallow aquifer. Nonetheless, any loss of pressure or water level in the original well occurred prior to 1979 when the original well failed, requiring construction of a new well in the deep aquifer.

### **Howarth**

42. In approximately 2001 or 2002, Charles Howarth constructed a domestic well in the deep aquifer. The domestic well is under artesian pressure, maintaining 3 to 7 psi of pressure.

### **Meissner**

43. Charles Meissner, Jr. owns three wells. One of the wells is completed in the shallow aquifer at a depth of 90 feet.

44. A second well was constructed to a depth in excess of 103 feet (See Protestants Exhibit 404, second page) in 1970, and is used for domestic and stockwater purposes. This well will be referred to as the "Double R Cattle Well." The well casing is not perforated, and the water in the well is derived from the bottom of the casing. The casing passes through a significant layer of clay from 70 to 85 feet in depth that probably acts as an aquatard. The water underlying the aquatard is under artesian pressure, but the water does not flow above land surface. The production zone for the well is completed in the intermediate aquifer.

45. Table 3 of Eagle Exhibit 24 establishes that, at a distance of 4,800 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the Double R Cattle Well will decline approximately 15 feet.

46. The depth and other information about the third well was not presented, except Meissner speculated that the well has collapsed.

### **Purdy**

47. Dana and Viki Purdy hold water right no. 63-2920 authorizing irrigation from ground water. The point of diversion is a well approximately 90 feet deep. Purdys pump supplemental ground water for irrigation when surface water is not available for irrigation. The water right for the irrigation well bears a priority date of 1953, but is constructed in the shallow aquifer.

48. Water right no. 63-15680 authorizes use of water for domestic and stockwater purposes and bears a priority date of June 1, 1900. The well is constructed to a depth of 250 feet. Viki Purdy testified that the well has been in place during several decades she has lived on the Purdy farm and that the well had not been worked on or replaced. Water in the well is under artesian pressure but does not free flow. The production zone for this well is most likely completed in the deep aquifer.

49. Table 3 of Eagle Exhibit 24 establishes that, at a distance of 2,700 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the well for water right no. 63-15680 will decline approximately 19.5 feet.

50. Water right no. 63-22652 authorizes a stockwater use, and bears a priority date of June 1, 1967. The point of diversion for water right no. 63-22652 is a well drilled to a depth of 120 feet. The well is constructed in the intermediate aquifer. Water in the well is under artesian pressure, but water does not free flow at ground surface. The well was constructed in 1966.

51. Table 3 of Eagle Exhibit 24 establishes that, at an approximate distance of 2,640 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the well for water right no. 63-22652 will decline approximately 19.0 feet.

52. A well log for another well associated with a home owned by Dana Purdy's mother was received into the evidence. The well was drilled in 1991.

### **Taylor**

53. Jerry and Mary Taylor own several water rights. Three of the water rights authorizes a total irrigation of 17 to 18 acres. Another water right authorizes domestic use. Claim no. 63-5040 is for a domestic/commercial use in the City of Star. The point of diversion is sufficiently distant from the proposed wells that it would not be affected. The wells nearest to the proposed points of diversion are completed in the shallow aquifer.

### **Combe**

54. Dean and Jan Combe hold a water right for a domestic use from a well with a priority date of August 5, 1956. The well is 65 feet deep, and is completed in the shallow aquifer.

### **Rosti**

55. Sam and Kari Rosti own a domestic well drilled in 1980. In addition, they own a 445 foot deep irrigation well completed in the deep aquifer drilled in 1992.

56. Diversion of water from the deep aquifer would have little or no effect on the Boise River in the reach from Lucky Peak to just below Star Bridge. The flows of the Boise River in this zone are affected primarily by water residing in the shallow aquifer and are directly related to surface water flows in the Boise River. Water in the deeper zones is separated by an aquatard or several aquatards. Water in the deeper aquifer migrate westerly toward the Snake River.

## **CONCLUSIONS OF LAW**

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to

be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Idaho Code § 42-111 defines the phrase “domestic purposes.” Stockwater use of up to 13,000 gallons a day is recognized as use of water for domestic purposes.

4. In 1951, the Idaho Legislature enacted legislation known as the Ground Water Act. In 1953, the Idaho Legislature amended the Ground Water Act. The 1953 amendment recognized that ground water rights would be administered according to the prior appropriation doctrine, but that prior water rights should not prevent the full economic development of the ground water resources of the State of Idaho, and that ground water appropriators would be required to pump from a “reasonable pumping level” established by the Department. In 1978, the Idaho Legislature amended the Ground Water Act again. The 1978 amendment expressly stated that domestic water rights are subject to the reasonable economic pumping level standard.

5. In *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), the Idaho Supreme Court determined that a later in time appropriator should be enjoined from pumping ground water for irrigation that almost immediately dried up a domestic well located nearby. The court held that the water right for the domestic well was perfected prior to the irrigation water right and before the reasonable pumping level standard was applied to domestic beneficial uses, and that the domestic water right holder was entitled to the protection of the ground water pumping level existing prior to pumping by the junior appropriator. The court held that the injunction was not permanent, and could be absolved upon full compensation by the junior appropriator for the cost of deepening the senior appropriator’s well and payment of the costs of additional equipment and energy.

6. The Idaho Supreme Court stated in *Parker v. Wallentine*:

Under the doctrine of prior appropriation, because Parker’s domestic well was drilled prior to Wallentine’s irrigation well, Parker has a vested right to use the water for his domestic well. That right includes the right to have the water available at the historic pumping level or to be compensated for expenses incurred if a subsequent appropriator is allowed to lower the water table and Parker is

required to change his method or means of diversion in order to maintain his right to use the water.

103 Idaho 506, 512 (1982) (emphasis supplied). The Idaho Supreme Court went on to note that:

Parker will not be deprived of any right to his use if water can be obtained for Parker by changing the method or means of diversion. The expense of changing the method or means of diversion, however, must be paid by the subsequent appropriator, Wallentine, so that Parker will not suffer any monetary loss. Thus, upon a proper showing by Wallentine that there is adequate water available for both he and Parker, it is within the inherent equitable powers of the court upon a proper showing and in accordance with the views herein expressed to enter a decree which fully protects Parker and yet allows for the maximum development of the water resources of the State.

103 Idaho at 514.

7. Under *Parker*, if (1) pumping of ground water by junior ground water appropriators causes declines in pumping water levels in wells of the senior water right holders because of local well interference, and (2) the water rights held by the senior water right holders bear priority dates earlier than 1953, or 1978 for domestic water rights, the holders of the senior water rights are, at a minimum, entitled to compensation for the increased costs of diverting ground water caused by the declines in ground water levels.

8. The extent to which *Parker* provides protection to the protestants' water rights depends on proof of injury and factual similarities to the facts of the *Parker* case.

9. In *Parker*, the owner of the domestic well was unable to divert water from the domestic well within minutes of when the junior priority right holder began pumping ground water. The proof of the lowered water table caused by pumping from the irrigation well that resulted in inability to pump water from the domestic well was established through testimony about the effects of the initial pumping from the Wallentine well and by a pump test conducted by the parties and the Department.

10. In an administrative hearing for an application to appropriate water, the applicant bears the burden of proving that the proposed use of water will not injure other water rights. If a protestant seeks the protection of *Parker* that would insulate the protestant from the reasonable pumping level standard of the Ground Water Act, however, the protestant must come forward with evidence that: (1) the protestant is the holder of a water right that is not subject to the reasonable pumping standard of the Ground Water Act, and (2) the protestant's diversion equipment and facilities are capable of diverting the protestant's water right at the ground water levels at or about the time the application is being considered. Once the protestant comes forward with the information, the applicant ultimately bears the burden of proving that the proposed use of water will not injure the protestant under the *Parker* standard.

11. Pumping of 8.9 cfs will not cause water level declines in area wells below a level that is reasonable.

12. The following describes how *Parker* applies to each of the active protestants.

## **Moyle**

13. The priority dates of the water rights held by Moyle predate the 1953 amendment of the Ground Water Act subjecting subsequent appropriations of water to the reasonable pumping level standard. Moyles are entitled to protection of their historical water levels in the four wells recorded by their water rights and in one other domestic well associated with a home owned by Joseph and Lynn Moyle. Evidence presented established that Moyles were receiving water under artesian pressure at the time Eagle filed its applications and during the summer preceding the hearing. Diversion from the proposed Eagle wells will injure Moyles' water rights.

14. Prior to diverting water from its existing or proposed wells, Eagle must (a) supply water for uses of ground water from the five Moyle wells entitled to *Parker* protection at no cost to Moyles except the cost for incidental electricity that adds additional pressure to the water supply for domestic and commercial uses, and be immediately ready and able to physically deliver the water to Moyles; or (b) acquire the water rights from Moyles, possibly through condemnation. To be immediately ready and able to physically deliver water to Moyles, Eagle must complete one of the following prior to initiating pumping from and beneficial use of ground water under permits for these applications: (a) physically connect Moyle's water delivery system to Eagle's municipal water system; or (b) with Moyles' consent, place the necessary pumps in the Moyle wells, supply the power for the pumps, construct or install any other physical features, including running power to the wells, and at the same time, insure the water supply to Moyles' beneficial uses is not interrupted; or (c) drill new wells that will supply the water to Moyles' beneficial uses and construct and install all necessary features. Eagle must pay all construction and equipment costs, maintenance, and power costs, except for the electricity costs described above to add additional pressure for domestic and commercial uses.

## **Muller**

15. The priority date for water right no. 63-22650 (1887), owned by Eugene Muller, predates the 1953 amendment to the Ground Water Act that subjects water rights to the reasonable pumping level standard. The original well for water right no. 63-22650 was constructed in the shallow aquifer. In 1979 Muller dug a new well in the deep aquifer. *Parker* would only protect Muller's water right from injury to water levels in the shallow aquifer. The hearing officer determines that pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. Any new water levels (or pressures) in a new well constructed in 1979 are subject to the reasonable pumping level standard established by the 1978 amendment to the Ground Water Act as it relates to domestic water rights.

## **Howarth**

16. Charles Howarth constructed a domestic well in the deep aquifer in approximately 2001 or 2002. The domestic well is under artesian pressure, maintaining 3 to 7 psi of pressure. Howarth's well is subject to the reasonable pumping level standard established by the 1978 amendment to the Ground Water Act as it relates to domestic water rights.

## Meissner

17. One of Meissner's three wells derives water from the shallow aquifer. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer.

18. The Double R Cattle Well is a domestic well and is entitled to *Parker* protection because its use predates the requirement of ground water pumping levels under the 1978 amendment to the Ground Water Act.

19. The Double R Cattle Well is completed in the intermediate aquifer. Because Eagle did not satisfy its burden of proving the relationship between the intermediate and the deep aquifer, the hearing officer will assume that the Theis equation drawdowns apply directly to the intermediate aquifer. Under *Parker*, Eagle must compensate Meissner for the additional costs of pumping. Eagle must notify Meissner in the year it begins diverting water from the proposed wells. To avail himself of the benefits of *Parker*, Meissner must measure the water levels in the Double R Cattle Well, beginning during the year Eagle begins pumping water from the proposed wells. Meissner must allow Eagle the opportunity to observe or independently measure water levels in the Meissner well. If Meissner monitors static water levels in his well and can show that water levels continue to decline in the well after Eagle begins pumping water, Eagle must compensate Meissner for the additional cost of pumping from up to 15 feet of water level declines, including costs of lowering a pump, if necessary. If the well dries up within the 15 feet of water level declines, Eagle must either: (a) provide free water service to Meissner through its municipal water system; or (b) redrill a well for Meissner and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire Meissner's water right, perhaps through condemnation.

20. The depth of the third Meissner well is unknown. Meissner had the burden to show that he had a water right for the well bearing a priority date that would qualify for *Parker* protection. Meissner did not satisfy his burden of proof for the third well.

## Purdy

21. Dana and Viki Purdy own an irrigation well that is approximately 90 feet deep and is pumped to supply supplemental ground water for irrigation when surface water is not available. The water right for the irrigation well bears a priority date of 1953. Pumping from the deep aquifer will not injure water right no. 63-2920 because Purdys divert ground water from the shallow aquifer. The water level in the Purdy irrigation well is not entitled to *Parker* protection.

22. The well for water right no. 63-15680 is a domestic well entitled to *Parker* protection of ground water levels.

23. The point of diversion for water right no. 63-15680 is a well drilled to a depth of 250 feet. The well is probably completed in the deep aquifer, although the well does not free flow at land surface. Under *Parker*, Eagle must compensate Purdys for the additional costs of pumping from a deeper depth. Eagle must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-15680, beginning in the first year Eagle

begins pumping water from the proposed wells. Purdys must allow Eagle the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after Eagle begins pumping water, Eagle must compensate Purdys for the additional cost of pumping from up to 19.5 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up, Eagle must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-15680, perhaps through condemnation.

24. Water right no. 63-22652 authorizes domestic and stockwater use, and bears a priority date of June 1, 1967. The well for water right no. 63-22652 is a domestic well entitled to *Parker* protection of ground water levels.

25. The point of diversion for water right no. 63-22652 is a well drilled to a depth of 120 feet. The well is constructed in the intermediate aquifer. Water in the well is under artesian pressure, but water does not free flow at ground surface. The well was constructed in 1966. Under *Parker*, Eagle must compensate Purdys for the additional costs of pumping from a deeper depth. Eagle must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, Purdys must measure the water levels in the well for water right no. 63-22652, beginning in the first year Eagle begins pumping water from the proposed wells. Purdys must allow Eagle the opportunity to observe or independently measure the water levels in their well. If Purdys monitor static water levels in their well and can show that water levels decline in the well after Eagle begins pumping water, Eagle must compensate Purdys for the additional cost of pumping from up to 19 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up Eagle must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-22652, perhaps through condemnation.

26. Purdys also presented evidence about a well supplying water to Dana Purdy's mother's home. This well was drilled after domestic wells were subjected to the reasonable pumping level standard.

### **Taylor**

27. The Taylor wells are completed in the shallow aquifer. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. The water levels in the Taylor wells are not entitled to *Parker* protection.

### **Combe**

28. The Combe well is 65 feet deep. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. The water level in the Combe well is not entitled to *Parker* protection.

## Rosti

29. Rostis own a domestic well drilled in 1980. The Rosti domestic well was drilled after the 1978 amendment to the Ground Water Act that subjected domestic wells to the reasonable pumping level. The Rosti domestic well is not entitled to *Parker* protection of ground water levels.

30. The Rosti irrigation well completed in the deep aquifer was drilled in 1992. The Rosti irrigation well was constructed after the 1953 amendment to the Ground Water Act. The Rosti irrigation well is not entitled to *Parker* protection of ground water levels.

31. Water levels and pressures are not declining significantly in the area where water is sought for appropriation. Nonetheless, IDWR staff raised concerns about limitations of the pump test. Furthermore, in its addendum to the pump test report, Eagle recognized some of the uncertainties about sufficiency of the water supply and injury and recommended further ground water monitoring. IDWR staff recommended the construction/identification by Eagle of two observation wells, one up-gradient and one down-gradient of the proposed wells. In addition, Eagle must develop a monitoring, recording, and reporting plan for the observation wells.

32. By compensating the protestants entitled to protection of water levels/pressures under *Parker*, and by monitoring ground water levels during pumping, the proposed appropriation by Eagle will not injure other water users.

33. There is sufficient water for the purposes sought by Eagle's applications. The additional monitoring of the two dedicated observation wells will insure that the deep aquifer in the area is not overappropriated.

34. The application is not filed in bad faith or for purposes of speculation or delay.

35. Eagle has sufficient monetary resources to complete the project.

36. The proposed project is in the local public interest.

37. The proposal conserves the water resources of the state of Idaho because irrigation and other outside uses of water will be provided primarily by other water rights.

## ORDER

IT IS HEREBY ORDERED that applications to appropriate water nos. 63-32089 and 63-32090 are **Approved** subject to the following conditions:

Proof of application of water to beneficial use shall be submitted on or before **August 1, 2012**.

In connection with the proof of beneficial use submitted for this permit, the permit holder shall also submit a report showing the total annual volume, the maximum daily volume, and the maximum instantaneous rate of flow diverted from the point of diversion authorized for this

permit during the development period. The report shall also show the maximum instantaneous rate of diversion, either measured or reasonably estimated by a qualified professional engineer, geologist, or certified water rights examiner, for the entire City of Eagle municipal water system. The report shall also describe and explain how water diverted under this permit provides an additional increment of beneficial use of water for the City of Eagle municipal water system as opposed to an alternative point of diversion for prior water rights already held and used by the City of Eagle for its municipal water system.

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Subject to all prior water rights.

Place of use is within the service area of the City of Eagle municipal water supply system as provided for under Idaho Law.

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Prior to diverting water from its existing or proposed wells, for the four wells identified as points of diversion for water right nos. 63-2546 and 63-2609, and for the domestic use of water in the home presently owned by Joseph and Lynn Moyle, the right holder shall: (a) supply water for uses of the five Moyle wells at no cost to Moyles except the cost for incidental electricity that adds additional pressure to the water supply for domestic and commercial uses and be ready and able to immediately, physically deliver the water to Moyles; or (b) purchase the Moyle water rights, perhaps through condemnation. To be immediately ready and able to physically deliver water to Moyles, the right holder must complete one of the following prior to initiating pumping from and beneficial use of ground water under this right: (a) physically connect Moyles' water delivery system to the right holder's municipal water system; or (b) with Moyles' consent, place the necessary pumps in the Moyle wells, supply the power for the pumps, construct or install any other physical features, including running power to the wells, and, at the same time, insure the water supply to Moyles' ongoing beneficial uses is not interrupted; or (c) drill new wells that will supply water to Moyles, and construct and install all necessary features. The right holder shall pay for all construction and equipment costs, maintenance, and power costs, except for the electricity costs described above to add additional pressure for domestic and commercial uses.

The right holder must compensate Meissner for additional costs of pumping from the Double R Cattle Well because of declines in water levels caused by pumping from the authorized points of diversion. The right holder must notify Meissner of the year it begins diverting water from the proposed wells. In order to avail himself of the benefits of *Parker*, however, Meissner must measure the water levels in the Double R Cattle Well, beginning during the year Eagle begins

pumping water from the proposed wells. Meissner must allow Eagle the opportunity to observe or independently measure water levels in the Meissner well. If Meissner monitors static water levels in his well and can show that water levels continue to decline in the well after the right holder begins pumping water, Eagle must compensate the right holder for the additional cost of pumping from up to 15 feet of water level declines, including costs of lowering a pump, if necessary. If the well dries up within the 15 feet of water level declines, Eagle must either: (a) provide free water service to Meissner through its municipal water system; or (b) redrill a well for Meissner and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire Meissner's water right, perhaps through condemnation.

The right holder must compensate Purdys for the additional costs of pumping from the well described as a point of diversion by water right no. 63-15680. The right holder must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-15680, beginning in the first year the right holder begins pumping water from the proposed wells. Purdys must allow the right holder the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after the right holder begins pumping water, the right holder must compensate Purdys for the additional cost of pumping from up to 19.5 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up within the 19.5 feet of ground water declines, the right holder must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-15680, perhaps through condemnation.

The right holder must compensate Purdys for the additional costs of pumping from the well described as a point of diversion by water right no. 63-22652. The right holder must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-22652, beginning in the first year the right holder begins pumping water from the proposed wells. Purdys must allow the right holder the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after the right holder begins pumping water, the right holder must compensate Purdys for the additional cost of pumping from up to 19 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up within the 18 feet of ground water declines, the right holder must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-22652, perhaps through condemnation.

Prior to diversion of water under this right, the right holder shall construct/identify two observation wells, one up-gradient and one down-gradient of the production wells under this right. The location and construction must be approved by the Department. Each observation well must be constructed so that water levels in each of the three aquifers can be independently measured.

Prior to diversion of water under this right, the right holder shall develop and the Department must approve, a monitoring, recording, and reporting plan for the observation wells.

The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

The wells constructed at the points of diversion shall be constructed in accordance with the rules of the Idaho Department of Water Resources regarding well construction standards and measurement of diversions and the rules of the Department of Environmental Quality for Public Drinking Water Systems, IDAPA 58.01.08.

Dated this 17<sup>th</sup> day of July, 2007.



---

**Gary Spackman**  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of July, 2007, a true and correct copy of the foregoing document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order and Explanatory Sheet for "Responding to Preliminary Orders..." when a hearing was held.

JERRY & MARY TAYLOR  
3410 HARTLEY  
EAGLE ID 83616

CORRIN & TERRY HUTTON  
10820 NEW HOPE RD  
STAR ID 83669

SAM & KARI ROSTI  
1460 N POLLARD LN  
STAR ID 83669

LEEROY & BILLIE MELLIES  
6860 W STATE ST  
EAGLE ID 83616

DEAN & JAN COMBE  
6440 W BEACON LIGHT  
EAGLE ID 83616

BRUCE M SMITH  
MOORE SMITH BUXTON TURKE  
225 N 9TH STE 420  
BOISE ID 83702

JOHN M MARSHALL  
GIVENS PURSLEY  
PO BOX 2720  
BOISE ID 83701-2720

CHARLES L HONSINGER  
DANIEL V STEENSON  
RINGERT CLARK CHARTERED  
PO BOX 2773  
BOISE ID 83701-2773

WESTERN REGION  
ATTN JOHN WESTRA  
2735 AIRPORT WAY  
BOISE ID 83705-5082

  
Deborah J. Gibson  
Administrative Assistant



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

August 14, 2007

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

Re: In the matter of the protested applications for permit to appropriate water nos.  
63-32089 and 63-32090 in the name of the City of Eagle

Dear Parties:

Enclosed is another response to the Preliminary Order that the Idaho Department of Water Resources ("Department") received from Protestant Mike Moyle in the above-referenced matter. I am providing this copy to all parties because it appears this response was not provided to the parties as required and stated in the Department's Rules of Procedures.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman".

Gary Spackman  
Hearing Officer

Enclosure

Cc: All the parties on service list (attached)

RECEIVED

AUG 15 2007

Givens Pursley, LLP

RECEIVED

JUL 31 2007

DEPARTMENT OF  
WATER RESOURCES

July 27<sup>th</sup>, 2007

Dear Mr. Spackman,

This letter is in response to your Preliminary Order issued July 17<sup>th</sup>, 2007.

As a resident of this State and as a representative of my constituents, I have several concerns about this Order.

The Department's letter dated 3-10-06 ordered the City of Eagle to arrange a time for the anticipated pump tests with the other parties. Eagle defied this order. No arrangements were made, no notifications were sent. In addition, from Eagle's own 7-Day Aquifer Test page 2 they state the pumping well was moved to test well #2. None of this was known to the protesters either. It is illegal for us to trespass on private property. Living near the site, we kept watching for equipment, signs of their pump tests and waited for arrangements to be made. In your Preliminary Order, page 8 item 16, you state that other parties were not given the opportunity to participate in the test and to monitor their wells.

So Eagle defies your Order, fails to arrange with protesters, moves their pump test to a different location unknown to protesters and we missed the opportunity to complain? Just exactly when was our opportunity? We are at fault? We didn't even know the tests were done until it was all over and too late to complain! How then is it the protesters fault (page3)?

Why were the protesters shut out of the pump tests? What was Eagle afraid might be found out if our wells were monitored at the time of their tests? So Eagle defies your Order and gets rewarded with everything they asked for!

The test should have been done at a higher rate and for a longer period to determine the true impacts. The Department knows this and should at a very minimum require a new pump test at a higher rate before approving a water right.

Idaho code 42-237a-g states, "Water in a well shall not be deemed available to fill a water right therein if withdrawal there from of the amount called for by such right would affect ....the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge."

Show me the study that proves that the "anticipated average rate of future natural recharge" will cover the amount of water that this applicant will withdraw from this aquifer.

Remember Eagle has the burden to prove extra water was available. They did not.

I also believe that IDWR needs to establish what the reasonable pumping level for this aquifer is before they approve any new water rights. For IDWR to fail to define reasonable pumping levels would be a disservice to all parties involved.

Information concerning the drop in our aquifer (wells having to go deeper to tap into their water right) was not allowed in the hearing because of technicalities. I understand there have been additional wells in this area that have had to go deeper since the hearing. I thought the hearing was to gather all the facts available. What difference does it make to the facts who presents them? If there is information about drops in the aquifer from whatever source, they should have been included in this hearing. To make decisions without all the facts is a dangerous precedent to set.

In a letter from the Department dated December 26th, 2005, It stated that the Department will closely monitor construction of a pump test well and an additional monitoring well. Who at the Department closely monitored the construction of these wells and on what dates? Who at the Department monitored the actual pumping tests? If the Department was notified in advance, why were not my constituents? Are there screens at different levels that are allowing co-mingling? If you tell me no, how do you know?

In the beginning, all of us were led to believe Eagle's permits represented a transfer of water rights. They do not. They are for new water rights. What policy does the Department have regarding mitigation? These rights represent a much greater use, much longer period of time and most importantly they are going to the foothills and everybody knows it. M3, Suncor, Avimore, etc. do not have the water to provide for such large developments. The City of Eagle now has annexation signs clear to the top of Horseshoe Bend Hill. Their service area is a moving target. It grows larger every day. And it is going north! Dry foothills, no water, guess what? Eagle is gunning for our aquifer. How can the Department possibly expect this aquifer, which is dropping, to provide all the water for the dry foothills to the north? But that is what this order will set the precedent for. Water spreading is illegal. But Eagle is headed in that direction with this preliminary order.

United water and Star Water both have said they could provide water for the area. In fact, I believe United Water and Star Water have both run lines into the area in the last couple of months. Star has a new well and a water right which would allow them to service part of the area today. I believe this application is not about providing water as much as it is about money.

If I am not mistaken, I believe your Department, has not approved a new consumptive use for water unless it was for a municipality or a big developer, since 1992. I believe if

a farmer or some other individual were to sue the department over this fact they would probably win.

The law does not allow mining. By approving this application you will be allowing mining of the aquifer. There is approximately a million acre foot of surface water leaving the valley every year. Before using ground water you should look at the possibilities of using the extra surface water and not mining the ground water. If you are approving this application because of this million acre foot, you should be aware that new studies show that the water that you are over-appropriating actually goes to the Payette River. At the very least before approving this water right application you should do a study to make sure where this quote "extra water" is going or coming from.

Last but not least, my biggest concern is a repeat of the Eastern Snake River plain aquifer problem. Director Tuthill reported in June that it is a very serious problem with no solution in site. As a state legislature we have expended millions of dollars to try to fix the problem. No fix is in sight. Now we are looking at an even bigger problem in this region due to over appropriation and mining of the aquifer here. In the Hagerman valley area we are talking about fish farms. In the Treasure Valley we are talking about thousands of homes and people.

Please take these concerns into consideration before making your final decision.

Respectfully,

A handwritten signature in cursive script, appearing to read "Mike Moyle".

Mike Moyle

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of August, 2007, a true and correct copy of the foregoing document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Transmittal letter dated August 14, 2007 from Gary Spackman, Hearing Officer.

**JERRY & MARY TAYLOR  
3410 HARTLEY  
EAGLE ID 83616**

**CORRIN & TERRY HUTTON  
10820 NEW HOPE RD  
STAR ID 83669**

**SAM & KARI ROSTI  
1460 N POLLARD LN  
STAR ID 83669**

**LEEROY & BILLIE MELLIES  
6860 W STATE ST  
EAGLE ID 83616**

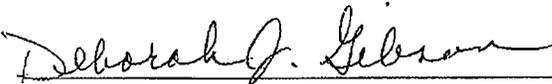
**DEAN & JAN COMBE  
6440 W BEACON LIGHT  
EAGLE ID 83616**

**BRUCE M SMITH  
MOORE SMITH BUXTON TURKE  
950 W BANNOCK STE 520  
BOISE ID 83702**

**JOHN M MARSHALL  
GIVENS PURSLEY  
PO BOX 2720  
BOISE ID 83701-2720**

**CHARLES L HONSINGER  
DANIEL V STEENSON  
RINGERT CLARK CHARTERED  
PO BOX 2773  
BOISE ID 83701-2773**

**WESTERN REGION  
ATTN JOHN WESTRA  
2735 AIRPORT WAY  
BOISE ID 83705-5082**

  
\_\_\_\_\_  
Deborah J. Gibson  
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

August 7, 2007

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

Re: In the matter of the protested applications for permit to appropriate water nos. 63-32089 and 63-32090 in the name of the City of Eagle

Dear Parties:

Enclosed are responses to the Preliminary Order that the Idaho Department of Water Resources ("Department") received from two Protestants in the City of Eagle matter. I am providing these copies to all parties because it appears these responses were not provided to the parties as required and stated in the Department's Rules of Procedures. The Department has received two Petition for Reconsideration therefore an evaluation of these responses will be made by the hearing officer and a response will be issued.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is written in a cursive, flowing style.

Gary Spackman  
Hearing Officer

Enclosure

Cc: All the parties on service list (attached)

8/7/07  
Spackman & Spackman, LLP

Gary

RECEIVED  
JUL 26 2007  
DEPARTMENT OF  
WATER RESOURCES

July 24, 2007

To: Mr. Gary Spackman - IDWR hearing officer  
From: Mary Taylor - protestant  
Re: Preliminary Order" for City of Eagle applications # 63-32089 & 63-32090

Dear Mr. Spackman,

This letter is my "Petition for Reconsideration".

**Facts Presented at Hearing**

I provided scientific documentation of the water levels in my well dating from 1999 to October 2006. This data was gathered by professional firms:

- SPF Water Engineering of Boise
- Hydro Logic, Inc. of Boise
- Adamson Pump and Drilling Company of Nampa

That evidence established the following facts:

<u>Date</u>	<u>Water level</u>	<u>Circumstances</u>
September 8, 1999	48 to 61 feet (average 54.5')	during 1 hour flow test of my well
<b>June 25, 2006</b>	<b>75.82</b>	measurement taken a few days after Eagle's pump test
August 18, 2006	69.1	
October 11, 2006	52.12	
Additional tests have been taken since the hearing in December of 2006 - see attached copies.		
December 18, 2006	50.05	
February 19, 2007	50.58	
April 26, 2007	52.71	
June 28, 2007	52.62	Almost exactly 1 year from when Eagle did pump tests

The 52.62' of June 2007 versus the 75.82' of June 2006, following Eagle's pump test, represents a drop in the water level of my well of 23-25 feet!

Certainly these additional tests, not available at the time of the hearing in December of 2006, qualify as "further factual development" (as per your "Certificate of Service"). In addition, they provide further evidence confirming the injury to my well during Eagle's pump tests.

We were told the "burden of proof rests upon the applicant". Eagle has failed to prove their pump test was **NOT** responsible for the unprecedented and inexplicable 23-25 foot drop in the water level of my well. As per Item # 8, page 17 of the "Preliminary Order" - "Proof of

Injury” - Injury did occur to the water level in my well at the same time Eagle did their pump tests. The City pumping this aquifer year-round at a far greater amount than the 1580 gpm is a guarantee of further injury.

**Preliminary Order - Findings of Facts**

Item #53, page 15 - Taylor - claim no. 63-5040

This water right predates the Legislative action of 1951 or the modifications of 1953. The “Priority date for this right is 03/01/1941”. This well is a free flowing artesian well as defined during the hearing, as is Mr. Moyle’s. However, there is a shut off valve so the flow is only used when needed. This water right point of diversion is within ½ mile of Mr. Moyle’s wells. This well is necessary for commerce as is Mr. Moyle’s. I ask for at least a portion of the same consideration for my well as given to the Moyle wells in this “Preliminary Order.”

**Conclusions of Law**

Item #27, page 20 - Taylor - water levels in wells “not entitled to *Parker* protection”.

During the hearing in December of 2006, the following definition was established:

- 0-80 feet shallow aquifer
- 80-200 intermediate aquifer
- 200-500 deep aquifer

Item #8, page 17 - “proof of injury” and “factual similarities”

“Factual similarities” - taken from 103 Idaho 506, 650 P.2d 648. *Parker v. Wallentine* are as follows:

“The Parker well had been drilled .... to a depth of 71 feet”. My wells are at 80 feet. By definition, Mr. Parker’s well would have been in the shallow aquifer. My well is in the shallow aquifer. “L. Junior Wallentine drilled a well..... to a depth of 200 feet”. Mr. Wallentine’s well was located in a deeper aquifer. City of Eagle’s wells are in a deeper aquifer.

<u>Parker v. Wallentine</u>	<u>My well v. City of Eagle</u>
71feet/deeper aquifer	80 feet/deeper aquifer
no water/pumped 1350 gpm	water level drop 23-25 feet/ 1580 gpm
injury occurred within few minutes	injury occurred within few days

To paraphrase Item #27, page 20: Mr. Parker’s (Taylor’s) well was completed in the shallow aquifer. Mr. Wallentine (City of Eagle) pumping from the deep aquifer would not injure water rights diverting from the shallow aquifer. This proved to be in error!

“Factual similarities” are here presented. “Proof of injury” was presented at the hearing with further confirmation on page 1 of this letter. To quote the “Preliminary Order” under “Conclusion of Law” Item #15 - Muller: “*Parker* would only protect Muller’s water right from injury to water levels in the shallow aquifer” (emphasis added). If *Parker* would have protected the Muller’s water right in the shallow aquifer, then it should protect mine in that

same shallow aquifer.

In addition, my water right #63-2858B predates any of the legislation of 1951, 1953 or 1978. The priority date is 06/10/1951. Even with those facts in mind, the "Ground Water Act" of 1951 reads as follows:

"Section 1. It is hereby declared that ..... All rights to the use of ground water in this state however acquired before the effective date of this act are hereby in all respects validated and confirmed."

From the 1953 modification:

"Section 1. It is hereby declared ..... early appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the state reclamation engineer".

The Eagle permits have never been about providing water. United Water and Star Sewer and Water have already been assigned the rights to do just that. In view of this fact, these permits by the City represent nothing more than the following as quoted from the report of the *Parker v. Wallentine* page 513, (*Noh v. Stoner*):

"If subsequent appropriators desire to engage in such a contest [a race to the bottom of the aquifer] the financial burden must rest on them and with ***no*** injury to the ***prior*** appropriators for loss of their water" (emphasis added).

These two permit applications represents nothing more than "a race to the bottom of the aquifer" on the part of Eagle. ***Water mining!*** And it will prove to be at the expense of other senior, prior water right holders. A drop of 23-25 feet in the shallow aquifer represents injury to my water right and the potential loss of it completely. I am asking for reconsideration for protection of my water rights under the *Parker v. Wallentine* case.

Quoting from page 510, footnote 4 of the report of *Parker v. Wallentine*:

"In this very case the record demonstrates that the Department issued the water permit to Wallentine because its ***experts*** did not expect that the Wallentine well would have a significant impact on the Parker domestic well. This later proved to be incorrect". ***This "Preliminary Order" will prove to be incorrect as well!***

***"Experts"*** deal in expectations. Water right holders deal in reality. When the ***experts"*** are again proven to be wrong, what then? Our water rights are voided, our land becomes valueless and our livelihoods in jeopardy. The injury is not "if" but "when". The decisions in this "Preliminary Order" represent nothing more than the taking of private property for public use without the protection by law of "just compensation".

Furthermore, on June 12, 2007, Director Tuthill reported to a Legislative Natural Resources Interim Committee as to the water conditions around our State. His report only reinforced our position. To quote Mr. Tuthill's comments to that committee - aquifers are being pumped at greater rates than are sustainable, shallow aquifers are being depleted, junior water right holders are being giving orders to shut off wells. Ground water throughout the State is in a troubling condition with southern Idaho at the top of the list.

All the money and political power in the world can not restore water depletion from the aquifer due to over appropriation, lack of recharge and no mitigation. These two Eagle permits pose a very clear injury to our water rights, in the future, if they are granted.

There is currently a moratorium on any new agricultural wells. Eagle's 2 permits represent a far greater drain on the aquifer than any new ag. well in both volume and time pumped. If ag. wells pose a threat of injury, Eagle's two permits guarantee it. Eagle's use of the water from this aquifer will go to sewage treatment facilities and down the Boise River - gone forever. And incidentally, we all know where Eagle's "Service Area" is going - NORTH. There is not enough water in Treasure Valley to green up those foothills, but Eagle is going to try by draining this aquifer.

Why is Eagle not required to provide a percentage of recharge for every gallon taken from this aquifer in your "Preliminary Order"? Why is Eagle not required to mitigate these "new" and "change of use" permits? That seems most inconsistent given the current conditions of our ground water as outlined by Director Tuthill on June 12th of this year.

In conclusion, I am asking for reconsideration of your decision not allowing protection of my water rights. This reconsideration is being asked due to the evidence presented at hearing and "further factual developments" provided in this letter as well as similarities to past cases in the law.

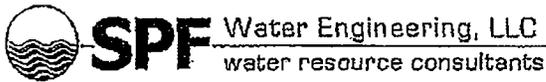
If water right permits # 63-32089 and 63-32090 are fully granted or any portion of them, the City of Eagle should be responsible for the injury to my well at their expense. Compensation for my loss should be the exclusive responsibility of the City of Eagle. Restoration of my senior water right should be done in a timely fashion and at the expense of Eagle.

Sincerely,



Mary Taylor  
3410 Hartley  
Eagle, Idaho 83616  
(208) 286-7575

enclosure: 2



June 12, 2007

Mary Taylor  
3410 North Hartley Lane  
Eagle, Idaho 83616

*Subject: Water Level Monitoring Results*

Dear Mrs. Taylor,

I have been measuring water levels in your irrigation well in accordance with the agreement signed by Mr. Jerry Taylor with SunCor Idaho, LLC. I am employed by SPF Water Engineering, who Suncor Idaho has hired to conduct this monitoring. These water level measurements are being taken as part of a larger water level monitoring program being conducted in northern Ada County.

During our conversation on June 11, you requested a summary of the water level measurements taken from your irrigation well since December 2006. On December 18, 2006, I measured a depth to water of 50.05 feet, measured from a hole in the well casing near the top. On February 19, 2007, I measured a depth to water of 50.58 feet. On April 26, 2007, the depth to water was measured at 52.71 feet. The April measurement was lower than the previous two measurements likely because the well was being used for irrigation.

— # 1  
— # 2  
— # 3

Please contact me with any questions you may have regarding these measurements.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason W. Thompson".

Jason W. Thompson, E.I.T.  
Associate Engineer

Document Info:  
Filename: Letter to Mary Taylor June07.doc  
SPF file number: 285.0170



**SPF** Water Engineering, LLC  
water resource consultants

July 24, 2007

Mary Taylor  
3410 North Hartley Lane  
Eagle, Idaho 83616

*Subject: Water Level Monitoring Results*

Dear Mrs. Taylor,

I have been measuring water levels in your irrigation well in accordance with the agreement signed by Mr. Jerry Taylor with SunCor Idaho, LLC. I am employed by SPF Water Engineering, who Suncor Idaho has hired to conduct this monitoring. These water level measurements are being taken as part of a larger water level monitoring program being conducted in northern Ada County.

The latest water level measurement occurred on June 28. At that time, I measured a depth to water of 52.62 feet. — # 4

Please contact me with any questions you may have regarding this measurement.

Sincerely,

Jason W. Thompson, E.I.T.  
Associate Engineer

Document Info:  
Filename: Letter to Mary Taylor July07.doc  
SPF file number: 285.0170

July 25, 2007

RECEIVED

JUL 26 2007

DEPARTMENT OF  
WATER RESOURCES

To: Director Tuthill proof  
IDWR

From: Mary Taylor

Re: "Preliminary Order" issued July 17<sup>th</sup> for City of Eagle water permit applications

Dear Mr. Tuthill,

I am a protestant to the City of Eagle's application for two water right permits in my neighborhood. A hearing was held in December of 2006. From the beginning of this process, we were told repeatedly the burden of proof rested upon the applicant (the City of Eagle). The hearing officer issued a "Preliminary Order" on July 17<sup>th</sup>.

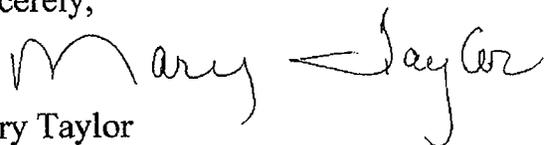
On June 12<sup>th</sup>, I attended the Legislative Interim Committee hearing on Natural Resources at which you gave a report as to the condition of water sources throughout our State. Your report was not encouraging. It only confirmed what all of us as protestants have known for some time.

I am extremely concerned with the "Preliminary Order" issued by your Department. It is my opinion that critical evidence regarding injury was ignored in the decision and the potential for greater injury dismissed. Furthermore, additional confirming data of that presented at the hearing has been made available since the hearing. I quote from the "Certificate of Service" which accompanied the Preliminary Order: "further factual development of the record". Such factual evidence is available and should be considered before a final order is given.

I am asking that I and all of the protesters be allowed to have the opportunity to present "Oral Arguments" to you as outlined in the Hearing Officer's "Certificate of Service". The City of Eagle failed to prove any thing in the hearing except the very real threat of injury to all of our water rights. The ground water issues are far to critical to be over appropriated and evidence of injury dismissed so casually. Please allow the protesters to at least bring their concerns to your attention.

Your consideration to this critical matter is greatly appreciated.

Sincerely,



Mary Taylor  
3410 Hartley  
Eagle, Idaho 83616  
(208) 286-7575

Dave

Petition For Reconsideration 7/26/07

Re: Wells on Legacy development

RECEIVED  
JUL 26 2007  
DEPARTMENT OF  
WATER RESOURCES

"The hearing officer intended that all the parties interested in the pump test have an opportunity to participate in the test -

The hearing officer is DISMAYED that Eagle did not follow the dictates of the order "

Page 3. 3rd paragraph

So the dismayed hearing officer gives them what they request!

We request an oral argument!!!

CHARLES H. HOWARTH, M.D.  
833 N. PALMER  
EAGLE, ID 83616  
286-9764

CH. Howarth M.D.

Eugene O. Muller  
320 N. PALMER LN.  
EAGLE, ID. 83616  
PHONE 286-7369

July 26, 2007

RECEIVED

To: Director Tuthill - IDWR  
From: Mary Taylor  
Re: Preliminary Order for City of Eagle Water Permits

JUL 27 2007

DEPARTMENT OF  
WATER RESOURCES

Dear Mr. Tuthill,

This letter is a follow-up to my letter dated July 25, 2007. I wish to make three points, before any decision is handed down, that I believe are critical to this issue.

1. I have provided Mr. Spackman with additional evidence of injury to the water level in my well at the time Eagle did their pump test. (See attached copy)

2. Eagle defied the Department's Order to:

"Arrange a time for the anticipated pump tests with the other parties."

Not only did Eagle not arrange a time with the protestants nor make any effort to notify us of the such, they also moved the pump test to a different well than originally designated. We had no way of knowing, even though we were watching for equipment and such, until the tests were already completed and the time for monitoring our wells was past. I just happened, almost by accident, to be monitoring my well at the time. Incidentally, I offered my well to Eagle for monitoring during the pump test and they refused (this was all brought out in the hearing).

3. In a letter dated December 26, 2005, the Department stated that they (the Department) intend "to closely monitor construction of these wells".

That was not done nor did the Department do any observation during the pump tests. So we only have the word of the City Eagle that all was completed properly.

In view of all this, I believe the minimum the Department can do to protect this valuable but diminishing resource is:

- a. require Eagle to re-schedule and re-do their pump tests
- b. require Eagle to notify all protestants two weeks in advance of pump tests
- c. require Eagle to pay for independent firms to monitor protestants' wells
- d. the Department have on-sight observers
- e. allow protestants or representative of their choosing to observe pump test.

As to the actual pump tests, these facts. The well they used for testing is a free flowing artesian well with a pressure of 8.1# and a flow of 1125 gpm. Those facts compromise the accuracy of the pump tests done with only 1580 gpm in June of 2006. Therefore, to provide more accurate information from which to draw conclusions of fact for any decision about these two permits the following should be required of Eagle:

- a. pump at 3500-4000 gpm
- b. continuous for two (2) weeks

Since they are asking for 8.9cfs in their permits, these seem like minimal requirements to achieve any degree of accuracy as to impact on other existing wells. Eagle will complain this is too expensive, but it is not nearly as costly as drilling new well for everyone affected or replenishing the aquifer once it has been depleted.

And by the way, what is going to limit Eagle to 8.9cfs? They have already demonstrated their willingness to defy Department orders. The Department has neither the manpower nor

resources to ride herd on them. So who is to say once they have these two permits they will not pump as much as they please? I believe their permits are for 5 wells which would clearly provide a far greater capacity than 8.9cfs. Once they are in the aquifer, it is theirs to plunder.

Given all the facts and history, these permits pose too great a risk to this aquifer to not require some additional testing and information gathering before any final decision is rendered.

Again, I appreciate your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mary Taylor".

Mary Taylor  
3410 Hartley  
Eagle, Idaho 83616  
(208) 286-7575

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of August, 2007, a true and correct copy of the foregoing document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Transmittal letter dated August 7, 2007 from Gary Spackman, Hearing Officer.

**JERRY & MARY TAYLOR**  
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**CHARLES L HONSINGER**  
**DANIEL V STEENSON**  
**RINGERT CLARK CHARTERED**  
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**WESTERN REGION**  
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Deborah J. Gibson  
Administrative Assistant

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AUG 02 2007

Givens Pursley, LLP

CHARLES L. HONSINGER (ISB #5240)  
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Attorneys for Protestants Joseph, Lynn and Michael Moyle,  
Eugene Muller, Dana and Viki Purdy, Charles W. Meissner, Jr.,  
Charles Howarth and Mike Dixon/Hoot Nanney Farms, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS TO )  
APPROPRIATE WATER NOS. 63-32089 ) PETITION FOR CLARIFICATION/  
AND 63-32090 IN THE NAME OF THE ) RECONSIDERATION  
CITY OF EAGLE )  
\_\_\_\_\_ )

COMES NOW Protestants Joseph, Lynn and Michael Moyle, Eugene Muller, Dana and Viki Purdy, Charles W. Meissner, Jr., Charles Howarth and Mike Dixon/Hoot Nanney Farms, Inc. (hereinafter "Protestants"), by and through their counsel of record, Ringert Clark Chartered, 455 S. Third Street, P.O. Box 2773, Boise, Idaho 83701-2773, and hereby file this petition for clarification/reconsideration of the hearing officer's July 17, 2007 *Preliminary Order*. This Petition is supported by the record herein, and is filed pursuant to IDAPA 37.01.01.730.02(a) and I.C. §67-5243. This Petition is timely based upon the *Preliminary Order's* service date of July 18, 2007 listed on the attached Certificate of Service.

## SUMMARY

The City of Eagle filed its applications to appropriate water right nos. 63-32089 and 63-32090 in January of 2005. The two applications sought a total of 8.9 cfs from groundwater for municipal purposes within the City of Eagle service area. Of the 8.9 cfs sought by the City, 6.68 cfs is sought for fire protection. *Preliminary Order*, p. 7, ¶10. Various parties, including the Protestants, protested the applications, and IDWR initiated proceedings in the matter.

On March 10, 2006, IDWR hearing officer Gary Spackman issued an *Order Continuing Hearing and Canceling Prehearing Deadlines*. That *Order* required that the City of Eagle “arrange a time for the anticipated pump tests with the other parties.” As the hearing officer found, the City of Eagle failed to comply with the *Order* and no time was arranged.

On July 12, 2006, the attorney for the City of Eagle informed the Department that the pump test was complete. Protestants received notification from the City of Eagle of the pump test a month after it was completed. Therefore, the Protestants, through no fault of their own, were denied the opportunity to observe the water levels in their wells and gather data simultaneous with the pumping conducted by the City of Eagle. *Preliminary Order*, p. 8, ¶16.

The Protestants filed a *Motion for Continuance* of the hearing in November, 2006 based in part upon the fact that the Protestants had no opportunity to participate in the pump test. The hearing officer denied the *Motion* on the grounds that the Protestants had not raised the City’s failure to notify them of the pump test as an issue between notification of its completion in July and the date of the *Motion* in November. On November 22, 2006, the Protestants filed a *Motion in Limine*, seeking to exclude from evidence all of the data and results of the pump test because the Protestants had no opportunity to participate in the same by collecting data from their own

wells during that test. The hearing officer denied the *Motion in Limine*, holding that the Protestants “did not avail themselves of the opportunity” to “complain about their inability to participate in the test” earlier. *Preliminary Order*, p. 3.

The hearing officer found that the seven day aquifer test was inadequate in several ways. The seven day aquifer test was conducted under a pumping rate of 1,580 gallons per minute. *Preliminary Order*, p. 8, ¶15. In a staff memorandum reviewing the City of Eagle’s 7-Day Aquifer Test report, IDWR stated that a “higher pumping rate than was originally proposed for the lower yielding Monitoring Well #1 (Legacy Well) could and should have been used to stress the system. If Eagle had done so, the effect on other nearby wells and possible boundary conditions would have been more clearly identified.” *Preliminary Order*, p. 8, ¶18.a. In a supplemental staff memorandum dated February 27, 2007, IDWR stated that “the aquifer test was not of sufficient duration to definitively evaluate aquifer boundary conditions and long-term impacts associated with pumping.” *Preliminary Order*, p. 10, ¶18. The hearing officer found that “the only direct measurements of drawdowns in the deep aquifer caused by pumping are the measurements of drawdowns for the Legacy well.” *Preliminary Order*, pp. 10 - 11, ¶25.

In his decision, the hearing officer discussed the 1951 Ground Water Act, noting that “ground water appropriators would be required to pump from a “reasonable pumping level” established by the Department.” *Preliminary Order*, p. 16, ¶ Then, the hearing officer determined that “[p]umping of 8.9cfs will not cause water level declines in area wells below a level that is reasonable” without stating what that level actually is, or providing any citations to factual support for that conclusion. *Preliminary Order*, p. 17, ¶11.

## ARGUMENT

### A. The Preliminary Order Must Include a Copy of the Approved Permit

The *Preliminary Order* approved applications to appropriate water nos. 63-32089 and 63-32090 subject to a number of listed conditions. The *Preliminary Order* does not include the permit with the listed conditions as is typical IDWR practice. All parties must be given an opportunity to review the permit with the conditions listed thereon prior to issuance of the same pursuant to the *Preliminary Order*. Review of the approved permit may identify errors, omissions, mistakes and eliminate potential misunderstandings.

### B. The Permit Should Limit or Deny the Quantity Proposed for Fire Protection

In its Findings of Fact the *Preliminary Order* finds that the “applications propose delivery of water” for 2,000 homes in a construction project, that the “peak one-hour demand for in-house use in 2,000 residential units is 2.23 cfs” and that 6.68 cfs of the projected 8.9cfs total instantaneous demand sought by the City is for fire protection purposes. *Preliminary Order*, p. 7, ¶10. Thus, the 8.9 cfs total sought under the permit applications was approved based on the fact that 6.68 cfs is required for fire protection. Despite these findings of fact, the *Preliminary Order* contains no condition limiting the use of 6.68 cfs of the total 8.9cfs sought for fire protection purposes. Such a condition must be imposed because without it, the “municipal” purposes for which the water right is sought may permit the entire quantity to be used on a year-round basis for “residential, commercial, industrial, irrigation of parks and open space, and related purposes.” See I.C. §42-202B(6). As “fire protection” use of a water only occurs either during a fire, or while filling a water storage facility to be used for “fire protection” purposes, the potential for abuse and overuse of the permitted water right for other purposes under the “municipal” label is

great without the limiting condition. As an alternative, IDWR may simply deny the 6.68 cfs sought for firefighting purposes as it is unnecessary. See I.C. §42-201(3)

C. **A New and Adequate Pump Test Must be Required Prior to Granting the Permit**

The City of Eagle's pump test and the results thereof are technically deficient. IDWR itself recognizes the deficiencies: (1) the pump test was not conducted at a pumping rate sufficient to identify boundary conditions and the impacts thereof upon nearby wells; (2) the length of the pumping test was insufficient to properly evaluate boundary conditions and the impacts of long-term pumping; (3) there are only measurements from one well (the Legacy well) that provide drawdown data for the deep aquifer from which the City is proposing to appropriate its water rights; (4) despite the hearing officer's order requiring the City to arrange a time with the other parties to the case for a pump test that would allow Protestants to measure the water levels in their wells during the test, the City failed to notify the Protestants of the pump test until after it was over. IDWR compounded the City's error by denying the Protestants' motions based upon the City's failure to follow the hearing officer's order. The fact is that the Protestants raised the issue well before the hearing - the failure to require the City to follow the hearing officer's orders has resulted in a serious infringement of Protestants' rights.

In addition to the deficiencies recognized by IDWR, the City of Eagle's monitoring data is so insufficient that IDWR is without adequate information to reach supportable conclusions as to potential impacts water nos. 63-32089 and 63-32090 will have on the local ground water levels. As noted above, the Protestants were not provided the opportunity to monitor water levels in their wells during the pump test. Water level monitoring conducted by the applicant was limited to the well being pumped and six observation wells. In its Findings of Fact, the

*Preliminary Order* finds that “[t]he shallow aquifer is a water table aquifer extending from land surface to approximately 100 feet below land surface. The intermediate aquifer is generally found from 100-200 feet below ground surface . . .” *Preliminary Order*, p. 10, ¶10. The *Preliminary Order*’s Findings of Fact further provide that “[t]he deep aquifer is located at depths below approximately 200 feet . . .” *Id.*

The observation wells included two shallow wells, 15 feet deep and 55 feet deep, located adjacent to one another. Thus, the monitoring data from the shallow aquifer is limited to only one point and lacks spatial representation of the shallow aquifer. Additionally, the monitoring data collected from the shallow aquifer wells shows a gradual decline during the monitoring period suggesting impact from pumping.

No monitoring wells were screened or had open intervals in the intermediate aquifer (100-200 feet below ground surface). Monitoring well nos. 1, 4, 6, and 11/12<sup>1</sup> were screened or had open intervals at depths greater than 200 feet below ground surface. Water levels in three of the four deep aquifer monitoring wells did not fully recover to pretest levels at the end of the monitoring period even though the pumping period was only seven days and the pumping rate was a fraction of the rate sought by the Applicant.

The monitoring data collected does not provide IDWR with adequate information to reach any conclusion as to the impact approving water nos. 63-32089 and 63-32090 will have on the local ground water levels. These deficiencies can all be remedied by simply requiring the City to conduct a pump test that is properly overseen by IDWR and in which the Protestants have

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<sup>1</sup>Monitoring well nos. 11 and 12 are the same well with two open intervals located at 345 to 425 and 400 to 500 feet below ground surface. The interval through which the water enters the well cannot be distinguished.

an opportunity to participate. IDWR must issue such an Order, and must withhold approval of these permit applications until such a test is properly conducted, and the results properly evaluated.

D. **The Department Must List the “Reasonable Pumping Level” it References in the Preliminary Order**

The hearing officer’s determination that “[p]umping of 8.9 cfs will not cause water level declines in area wells below a level that is reasonable” is without support. The hearing officer does not state what the “reasonable pumping level” is, and does not cite any support for his conclusion. At a bare minimum, IDWR must establish the reasonable pumping level (see I.C. §42-237a), and list the factual support for its conclusion. Without such factual information, the hearing officer’s determination is simply conclusory, and arbitrary and capricious.

**CONCLUSION**

For the foregoing reasons, IDWR should reconsider and clarify the Preliminary Order. IDWR must order that the City of Eagle conduct a proper pumping test with appropriate parameters and sufficient monitoring in which all of the Protestants actually have the opportunity to participate. If IDWR determines that there is a “reasonable pumping level” to which certain wells are subject, it must state what that pumping level actually is, and cite support for its conclusion. Finally, any Preliminary Order must also be issued with the proposed permit itself with all conditions to which it is subject including a condition limiting 6.68 cfs of the quantity sought by the City to fire protection purposes (alternatively, IDWR may simply deny the “fire protection” flows sought as unnecessary). Protestants request that the hearing officer set a briefing and argument schedule.

DATED this 1<sup>st</sup> day of August, 2007.

RINGERT CLARK CHARTERED

By Charles L. Honsinger  
Charles L. Honsinger  
Attorneys for Protestants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1<sup>st</sup> day of August, 2007, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Jerry & Mary Taylor  
3410 Hartley  
Eagle, Idaho 83616

Leeroy & Billie Mellies  
6860 W. State Street  
Eagle, Idaho 83616

Corrin & Terry Hutton  
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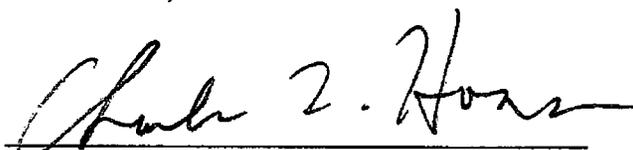
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Boise, Idaho 83701

  
\_\_\_\_\_  
Charles L. Honsinger

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS TO )	
APPROPRIATE WATER NOS. 63-32089 AND )	
63-32090 IN THE NAME OF THE CITY )	<b>ORDER GRANTING</b>
OF EAGLE )	<b>PETITIONS FOR</b>
_____ )	<b>RECONSIDERATION</b>

On July 17, 2007, the hearing officer issued a preliminary order in the above titled matter approving applications nos. 63-32089 and 63-32090. On July 18, 2007, the preliminary order was served on the parties by mailing a copy of the preliminary order to the each of the parties via the United States Postal Service.

The following parties filed timely petitions for reconsideration: United Water Idaho; Joseph, Lynn and Mike Moyle (Moyles), Eugene Muller, Dana and Viki Purdy, Charles W. Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanney Farms, Inc., all represented by Ringert Clark Chartered; Mary Taylor; and the City of Eagle. In addition, the hearing officer received individual comments from Mike Moyle, Eugene Muller, Charles Howarth.

On August 2, 2007, United Water Idaho filed a *Withdrawal of Petition for Reconsideration*.

On August 14, 2007, Ringert Clark Chartered withdrew as counsel for Dana and Viki Purdy. Dana & Viki Purdy are parties now representing themselves.

**ORDER**

IT IS HEREBY ORDERED that the Petitions for Reconsideration timely filed with the Idaho Department of Water Resources are **Granted**. An amended preliminary order will be expeditiously issued.

Dated this 21<sup>st</sup> day of August, 2007.



**Gary Spackman**  
Hearing Officer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of August, 2007, a true and correct copy of the foregoing document described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document Served: Order Granting Petitions for Reconsideration

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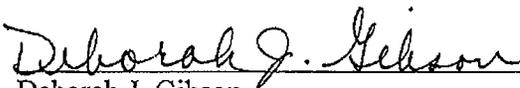
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